

Exhibit 326

United States of America ex rel. Ven-A-Care of the Florida Keys, Inc., et al.
v. Dey, Inc., et al., Civil Action No. 05-11084-PBS

**Exhibit to the August 28, 2009 Declaration of Sarah L. Reid in Support
of Dey's Opposition to Plaintiffs' Motion for Partial Summary Judgment**

Ross Uhl 2/24/2003

1

1 CAUSE NO. GV002327
 2
 3
 4 THE STATE OF TEXAS,)
 4 ex rel.)
 5 VEN-A-CARE OF THE)
 5 FLORIDA KEYS, INC.,)
 6) IN THE DISTRICT COURT
 6 Plaintiffs,)
 7) TRAVIS COUNTY, TEXAS
 7 v.)
 8) 53RD JUDICIAL DISTRICT
 8 DEY, INC.,)
 9 ROXANE LABORATORIES, INC., and)
 9 WARRICK PHARMACEUTICALS)
 10 CORPORATION, SCHERING-PLOUGH)
 10 CORPORATION, SCHERING)
 11 CORPORATION, LIPHA, S.A.,)
 11 MERCK-LIPHA, S.A., MERCK, KGAA,)
 12 and EMD PHARMACEUTICALS, INC.,)
 12)
 13 Defendants.)
 13
 14
 15
 16 VIDEO DEPOSITION OF ROSS UHL
 17 ORANGE BEACH, ALABAMA
 18
 19
 20 The video deposition of ROSS UHL,
 21 taken at the Hilton Garden Inn,
 22 23092 Perdido Beach Boulevard,
 23 Orange Beach, Alabama, on
 24 February 24, 2003, commencing at
 25 approximately 9:20 a.m.

1 APPEARANCES (CONTINUED)
 1
 2 FOR ROXANE LABORATORIES, INC.
 2 R. ERIC HAGENSWOLD, ESQUIRE
 3 SCOTT, DOUGLASS & McCONNICO, LLP
 3 ATTORNEYS AT LAW
 4 ONE AMERICA CENTER
 4 600 CONGRESS AVENUE, 15TH FLOOR
 5 AUSTIN, TEXAS 78701-2589
 5 (512) 495-6300
 6
 6 FOR WARRICK PHARMACEUTICALS CORP. AND SCHERING-PLOUGH
 7 CORP. AND SCHERING CORP.:
 7 C. MICHAEL MOORE, ESQUIRE
 8 LOCKE, LIDDELL & SAPP, LLP
 8 ATTORNEYS AT LAW
 9 2200 ROSS AVENUE, SUITE 2200
 9 DALLAS, TEXAS 75201-8001
 10 (214) 740-8000
 10
 11
 11 VIDEOGRAPHER:
 12 MIKE KORBE, KORBE PRODUCTIONS, INC.
 12
 13
 13 COURT REPORTER:
 14 DEBRA AMOS ISBELL, CSR,RDR,CRR
 14 ISBELL & ASSOCIATES
 15
 15
 16
 16
 17
 17
 18
 18
 19
 19
 20
 20
 21
 21
 22
 22
 23
 23
 24
 24
 25

25

2

1 APPEARANCES
 1
 2 FOR VEN-A-CARE:
 2 SUSAN THOMAS, ESQUIRE
 3 BERGER & MONTAGUE, P.C.
 3 ATTORNEYS AT LAW
 4 1622 LOCUST STREET
 4 PHILADELPHIA, PENNSYLVANIA 10103
 5 (215) 875-3000
 5 FOR VEN-A-CARE (CORPORATE REPRESENTATIVE):
 6 ZACHARY T. BENTLEY, ESQUIRE
 6 ATTORNEY AT LAW
 7 3426 DUCK AVENUE
 7 KEY WEST, FLORIDA 33040
 8 (305) 292-1635
 8 FOR THE STATE OF FLORIDA:
 9 MARK THOMAS, ESQUIRE (VIA TELEPHONE)
 9 ASSISTANT ATTORNEY GENERAL
 10 PLO1 CAPITAL
 10 MEDICAID FRAUD CONTROL UNIT
 11 TALLAHASSEE, FLORIDA 32399
 11 FOR THE STATE OF TEXAS:
 12 RAYMOND C. WINTER, ESQUIRE
 12 ASSISTANT ATTORNEY GENERAL
 13 P. O. BOX 12548
 13 AUSTIN, TEXAS 78711-2548
 14 (512) 475-4208
 14 FOR DEY, INC.:
 15 STEVEN A. FLECKMAN, ESQUIRE
 15 FLECKMAN & McGLYNN
 16 ATTORNEYS AT LAW
 16 515 CONGRESS AVENUE, SUITE 1800
 17 AUSTIN, TEXAS 78701
 17 (512) 476-7900
 18 AND
 18 DARRELL PRESCOTT, ESQUIRE
 19 COUDERT BROTHERS
 19 ATTORNEYS AT LAW
 20 1114 AVENUE OF THE AMERICAS
 20 NEW YORK, NEW YORK 10036-7703
 21 (212) 626-4400
 21
 22
 22
 23
 23
 24
 24
 25

25

4

1 INDEX
 2 EXAMINATION
 3 By Mr. Winter - page 7
 4 By Mr. Fleckman - page 176
 5 By Mr. Moore - page 263
 6 By Mr. Hagenswold - page 295
 7 By Ms. Susan Thomas - page 299
 8 By Mr. Fleckman - page 335
 9
 10
 11 EXHIBITS
 11
 12 Exhibit 776 - page 8
 12 State of Texas' Notice of Intention to Take
 13 Oral Deposition and Subpoena Duces Tecum
 13 (8 pages)
 14 Exhibit 777 - page 71
 14 Dey Laboratories Memorandum to Mari Carroll,
 15 Alberto Hoyo, Ross Uhl from Carrie Jackson,
 15 8/12/94, Re: State of Florida Medicaid
 16 Program - TX-D&W-07924 (1 page)
 16 Exhibit 778 - page 95
 17 Teams Win - Working a Homecare Pharmacy,
 17 Ross Uhl, Monday, January 24, 1994, 12-1 p.m. -
 18 DL-TX-0075972-991 (20 pages)
 18 Exhibit 779 - page 157
 19 Dey Laboratories Memorandum to Dave Marr from
 19 Ross Uhl, 10/14/97, Re: GeriMed Rebate
 20 Clarification - DL-TX-0020864-865 (2 pages)
 20 Exhibit 780 - page 159
 21 Dey Laboratories fax sheet to Ross Uhl from
 21 Cindy Daulong, 8/3/95, with attached
 22 Reimbursement Comparison Worksheet -
 22 DL-TX-0029712-713 (2 pages)
 23
 23
 24
 24
 25

25

Ross Uhl 2/24/2003

54

56

1 nonconfrontational working environment?

2 A. I would say that they had a nonconfrontational

3 working situation from what I observed at these

4 meetings.

5 Q. And from your observations, Ms. Burnham seemed

6 to be a person who was supportive of her superior, Mr.

7 Mozak?

8 MR. FLECKMAN: Objection; form.

9 A. That is correct.

10 MR. WINTER:

11 Q. Let me show you what was marked in these

12 depositions as Exhibit 72. And this has what has been

13 called throughout this case as the Helen Burnham memo.

14 You were shown a copy of that in the statement that you

15 gave to Mr. Breen and Mr. O'Connell; is that correct?

16 A. That is correct.

17 Q. And at the time you did not recall having

18 previously seen or received that memorandum, is that

19 accurate?

20 A. I don't recall seeing this memo, this

21 particular memo; that's correct.

22 Q. You did not recall that when you were shown it

23 last fall when Mr. O'Connell and Mr. Breen showed it to

24 you?

25 A. That is also correct.

1 saying our updated WAC, that would indicate that we came

2 up to match it, which would have put us in the same

3 situation they were.

4 MR. MOORE: Excuse me. Objection;

5 nonresponsive.

6 MR. WINTER:

7 Q. Would that have been inappropriate, in your

8 opinion, for Dey to have raised its WAC to match

9 Warrick's WAC?

10 MR. MOORE: Objection; form.

11 A. It would have been contrary to the work that I

12 had done as far as contact the state Medicaid --

13 contacted Florida and questioned him vigorously on why

14 they were paying what they were paying. So the answer

15 is yes.

16 MR. WINTER:

17 Q. Yes, it would have been inappropriate?

18 MR. MOORE: Objection; form.

19 A. Yes, it would have been inappropriate.

20 MR. MOORE: Please note my objection.

21 MR. WINTER: Duly noted.

22 MR. MOORE: I just wanted to make sure. I

23 didn't get a chance to make it because y'all were

24 talking over each other. I wanted it on the record

25 between the question and answer. Thank you.

55

57

1 Q. On the distribution --

2 MR. FLECKMAN: Hold on just one second. Go

3 ahead and complete your response.

4 A. I was going to say the reason is -- there's one

5 word in there that I know that I would have remembered,

6 the word "updated," "our updated WAC values." Updated,

7 if it's read in context with the word "Warrick," updated

8 would have meant that there would have been an increase

9 in WAC to reflect Warrick's WAC value. That's how I

10 interpret this now and how I would have interpreted it

11 then. And that would have been quite contrary to some

12 things that were available to me as far as what was

13 going on out there.

14 MR. WINTER:

15 Q. What do you mean when you say contrary to

16 things that were available to you as far as what was

17 going on out there?

18 A. Well, I would say prior to this memo I pointed

19 out that Warrick had had a price out there in the market

20 that Red Book was used to reimburse. They were using

21 that as their WAC even though they didn't call it their

22 WAC. And I was very proactive with trying to determine

23 why the State of Florida would utilize this price as the

24 WAC and reimburse on this what I considered at the time

25 was a fictitious number. Therefore by reading this and

1 MR. WINTER: You bet.

2 Q. Mr. Uhl, you mentioned that these conversations

3 that you had -- withdraw that question.

4 You indicated in response to the question I had

5 about Exhibit 72 that prior to the date noted on Exhibit

6 72, which is May 30th, 1995, this incident had occurred

7 where something was brought to your attention with

8 respect to Warrick's WAC process?

9 A. That is correct.

10 Q. Let's go back to that prior date, now, that you

11 were referring to. Do you recall approximately when

12 that was?

13 A. I don't. But in my sworn statement, you showed

14 an exhibit that pinpointed a memo from Carrie Jackson

15 regarding some conversations that she had had with Jerry

16 Wells with the State of Florida. And this was about the

17 same time that I was hearing from my customers about how

18 they had switched product to Medicaid in the State of

19 Florida. They had switched their customers, their

20 Medicaid customers, to a competitive product due to a

21 more favorable reimbursement. So whatever time around

22 that memo was the time that I initiated a phone call to

23 Jerry Wells myself to question him. Prior to this I had

24 seen no memos or heard nothing about any change in our

25 procedure as far as WAC goes.

Ross Uhl 2/24/2003

58

60

1 Q. Okay. I'm going to show you an exhibit here in
2 just a minute. And it's dated August 12th, 1994. And I
3 will tell you right now this is the memo that you're
4 referring to from Carrie Jackson. But before I hand you
5 this memo, let me ask you: Assuming that's accurate,
6 August of 1994 is the date of the memo, is that your
7 testimony, that it's around August 1994 that you had
8 this conversation with one of your customers?
9 A. It would have been in that same time frame. It
10 would have been prior to August.
11 Q. Probably July, June or July?
12 A. It could have been several months before that,
13 yes.
14 Q. So sometime in 1994 you had a conversation with
15 a customer?
16 A. Correct.
17 Q. Who brought to your attention the fact that
18 Warrick had a more favorable reimbursement; is that what
19 you said?
20 A. A more favorable reimbursement in the State of
21 Florida and also Texas because the customer had a
22 pharmacy in Texas.
23 Q. So the same customer who is complaining to you
24 -- withdraw that.
25 The same person who's telling you that Warrick

1 MR. WINTER: I know. I know the rules.
2 Q. What was the name of the customer?
3 A. Pharmacy Factors.
4 Q. So you've just told us -- who was the
5 individual at Pharmacy Factors that you were speaking
6 with?
7 A. I believe his name was Jeff -- I can't recall
8 his last name. Jeff Hunt or Jeff -- Jeff Hunt, I think.
9 Q. Was Mr. Hunt the owner of Pharmacy Factors?
10 A. No.
11 Q. What was Mr. Hunt's position at Pharmacy
12 Factors?
13 A. He was a pharmacy manager.
14 Q. And did he tell you that Pharmacy Factors also
15 owned a pharmacy in Texas?
16 A. Yes. I was aware of that from the various
17 sites that we shipped to.
18 Q. Where in Florida was Mr. Hunt at the time you
19 had the conversation with him?
20 A. Clearwater.
21 Q. And is that where the Pharmacy Factors pharmacy
22 was located, Clearwater?
23 A. One of their pharmacies was in Clearwater.
24 Q. Where else did they have pharmacies?
25 A. West Lake Village, California, and Houston,

59

61

1 has a more favorable reimbursement in Florida also told
2 you that he or she owned a pharmacy in Texas and Warrick
3 had a more favorable reimbursement in Texas as well?
4 MR. MOORE: Objection; form and leading.
5 A. That is correct.
6 MR. WINTER:
7 Q. Is that correct? Okay.
8 MR. MOORE: Objection; form and leading.
9 MR. WINTER: I think leading goes with form.
10 You don't need to say that unless I ask you.
11 MR. MOORE: I may say it anyway. Don't lead
12 the witness.
13 MR. WINTER: Well, I don't think you get to
14 unless I ask you.
15 MR. MOORE: That will be up to me.
16 MR. WINTER: Well, I don't think so.
17 MR. MOORE: Well, that's a decision I'll make
18 as we go along.
19 MR. WINTER: Well, it's a decision we may have
20 to go to the judge with if we have to.
21 MR. MOORE: Go on, Ray.
22 MR. WINTER: I'm ready to go on.
23 MR. MOORE: You're not entitled to lead the
24 witness and you know it. He's a third-party witness.
25 You know that, don't you?

1 Texas, I believe, Houston.
2 Q. So let's go back to 1994, summer of 1994. And
3 Mr. Hunt told you what?
4 MR. MOORE: Objection; form.
5 MR. WINTER:
6 Q. With respect to Warrick and reimbursement?
7 MR. MOORE: Objection; form.
8 A. Mr. Hunt indicated that because of a more
9 favorable reimbursement in Texas and Florida, that he
10 was going to put his patients on the Warrick product.
11 But then added it was a minimal part of their business,
12 less than 10 percent of their overall business, as to
13 say don't worry, we're not switching completely. Just
14 some patients.
15 MR. WINTER:
16 Q. So 10 percent of his business was going to be
17 diverted from Dey's products to Warrick's products?
18 A. He told me that he was or had moved his
19 patients in Texas and Florida to the Warrick product,
20 yes.
21 Q. What was he going to do with the other 90
22 percent of his business?
23 A. He would keep those patients on Dey Labs'
24 product.
25 Q. What was the differentiation between the 90

Ross Uhl 2/24/2003

62

64

1 percent and the 10 percent?

2 A. Because he mentioned that there was more of a

3 favorable reimbursement for the product in Texas and in

4 Florida.

5 Q. So was it only those 10 percent of his

6 customers that were purchasing a specific product that

7 both Warrick and Dey manufactured that would switch to

8 the Warrick product?

9 A. Yeah. It was albuterol. He said: The

10 albuterol product I'm going to buy from Warrick for my

11 patients, my Medicaid patients in Florida and Texas,

12 because of a more favorable reimbursement.

13 Q. And why did that strike you as something that

14 was, in your words, "inappropriate"?

15 MR. MOORE: Objection; form.

16 A. That didn't strike me as inappropriate. It

17 struck me -- perhaps it hit home then and gave me a

18 better understanding of exactly how and why the

19 reimbursement formulas of states play a role, an active

20 role, in the provider pharmacy; i.e., Pharmacy Factors'

21 decisionmaking and which products they choose for their

22 patients. And of course, upon further understanding of

23 this conversation that I more likely had with him and

24 others is that Texas and Florida had something in

25 common; i.e., they reimbursed from WAC as opposed to

1 yes.

2 Q. And you brought that to the attention of your

3 superiors in Napa?

4 A. No, not at that time. Because I didn't really

5 know what I was looking for. It was only when I

6 intercepted a piece of sales and marketing -- a piece of

7 marketing literature that Warrick had left behind to one

8 of my customers that it became clear on how this

9 different spread or this reimbursement was taking place.

10 Q. Well, you say you intercepted a piece of sales

11 and marketing literature that Warrick had left behind

12 with a customer?

13 A. Correct.

14 Q. What do you mean by intercepted?

15 A. It was sent in to me by one of my -- it might

16 have been this customer. I don't know if it was him or

17 not. But I received a sales piece from Warrick that had

18 what they called like a distributor price. I don't know

19 what the term was, but it was just a price. It was a

20 price on the paper. And then that price, by doing some

21 more investigation, was apparently picked up by Red Book

22 -- I believe it was Red Book or Blue Book, I'm not sure

23 which one -- that they used that price as the WAC. Now,

24 nowhere on the marketing piece of Warrick did it say

25 WAC. It just had a price on it. It didn't say WAC; it

63

65

1 some other type of calculation.

2 MR. MOORE: Objection; nonresponsive.

3 MR. WINTER:

4 Q. Prior to this conversation that you had with

5 Mr. Hunt, did you have the understanding or impression

6 that Dey's WAC prices were at or about the same as

7 Warrick's?

8 A. No. With this conversation it became clear to

9 me that Warrick's WAC price or at least what this

10 customer was telling me that they were being reimbursed

11 was different than ours. Therefore there was a more

12 favorable reimbursement.

13 MR. MOORE: Objection; nonresponsive.

14 MR. WINTER:

15 Q. Was there anything wrong with Warrick selling

16 its products at a different WAC price than you?

17 MR. MOORE: Objection; form.

18 A. I didn't have a judgment on if it was right or

19 wrong. I just knew that I was losing business.

20 MR. WINTER:

21 Q. So you undertook -- you took it upon yourself

22 to do some investigation into the way the different

23 states would reimburse Florida and Texas?

24 A. I started investigating the situation to try to

25 get an understanding of exactly what I was up against,

1 just had a price on it. But Blue Book or Red Book

2 picked that pricing up and used that as the WAC to

3 calculate what the reimbursement would be, WAC minus

4 something at the time, as I recall, WAC 10 or WAC 8 or

5 WAC minus 10 plus something plus a dispensing fee.

6 So then I realized: Well, this is the reason

7 why this customer wants to put his patients on this

8 product because this WAC is much higher than Dey's,

9 Dey's WAC, which, if all things are equal, they're using

10 WAC as a parameter. They're using this number as WAC.

11 So I felt like it was just a mistake; this number was

12 not intended to be WAC from Warrick, it was just a

13 number that had been, what I thought, incorrectly picked

14 up by the data process.

15 So that's when Carrie had sent me in some

16 information about Jerry Wells. And I said: I'm going

17 to call Jerry Wells with the state Medicaid, Florida

18 State Medicaid, and point out this mistake. I said:

19 You guys are using a fictitious price. It's not the WAC

20 price.

21 And he told me: There's nothing I can do about

22 it. They just go by what they tell us.

23 I said: I need clarification.

24 And he said: We just pay what is reported to

25 Blue Book or Red Book.

Ross Uhl 2/24/2003

66

1 And I said: But what's being reported is
 2 incorrect.
 3 And he said: Well, Warrick will have to call
 4 us and get that changed.
 5 I said: They're not going to call you because
 6 it's a higher price. There's no incentive for them to
 7 call you and change that, at least in my estimation.
 8 So that's how that conversation went. So
 9 that's when I became understanding of the sensitivity of
 10 WAC and how it played a role in provider pharmacies
 11 dispensing product A over product B.
 12 MR. MOORE: Objection; nonresponsive.
 13 MR. HAGENSWOLD: Same objection.
 14 MR. WINTER:
 15 Q. So was it your understanding that as a result
 16 of this higher price being used in the reimbursement
 17 methodology, that there was a bigger spread on the
 18 Warrick product?
 19 A. Yes, that was my understanding.
 20 Q. And what's your definition of spread?
 21 A. It would be in this case the WAC price of a
 22 product minus the actual cost to the pharmacy.
 23 Q. Minus the actual cost to the pharmacy?
 24 A. And the difference is, in essence, the spread.
 25 Q. And that would be the profit that the pharmacy

67

1 makes on the Medicaid reimbursement?
 2 MR. MOORE: Objection; form.
 3 A. At that point the word "profit" didn't dawn on
 4 me because that was not relevant to my selling career at
 5 Dey Labs. I was only concerned with one thing and
 6 that's losing the business to Warrick. The generics are
 7 market driven, price driven, and reimbursement up until
 8 now was a moot point to me. But then when I discovered
 9 that reimbursement, because of what I thought was a
 10 mistake in Red Book or Blue Book's part, that was giving
 11 a competitor an unfair advantage because simply I think
 12 it might have even been a clerical mistake. Then I
 13 said: Whoa, now I see why spread is relevant to the
 14 situation and not me going in cost to cost with my
 15 competitor anymore.
 16 MR. WINTER:
 17 Q. Did you later come to the understanding that
 18 spread is synonymous with the profit that the pharmacist
 19 makes on Medicare or Medicaid reimbursement?
 20 MR. MOORE: Objection; form. Leading the
 21 witness.
 22 A. Again, I'm hesitant to say yes because simply
 23 that was not an area where I wanted to go because it was
 24 none of my business, anything about the pharmacy's
 25 profit. It was none of my business if the pharmacy was

68

1 profitable or not.
 2 Q. That wasn't any of your concern at this time?
 3 A. Absolutely not.
 4 Q. Later did that become part of something that
 5 you were concerned with?
 6 A. No, it did not. Their profit did not become my
 7 concern.
 8 Q. I said I'd show you this memo, so I'm going to
 9 go ahead and give it to you now. It's the only copy I
 10 have. I've marked it as Exhibit 777.
 11 Do you want to look at it first?
 12 MR. MOORE: Can we take a break at some point
 13 here?
 14 MR. WINTER: Sure. Why don't we do that as
 15 soon as we deal with this exhibit.
 16 MR. MOORE: Sure.
 17 (EXHIBIT 777 WAS MARKED FOR IDENTIFICATION.)
 18 MR. WINTER:
 19 Q. Mr. Uhl, I've marked as Exhibit 777 a document
 20 that's Bates labeled TX-D&W-07924. It's also got
 21 another Bates label that's DL-001 on it. Go ahead and
 22 look at it and tell me when you're finished.
 23 A. (Reading.) Yes, this is the memo that I was
 24 referring to regarding initiation by Carrie to call
 25 Jerry Wells at the State of Florida Medicaid office.

69

1 And the word "direct price," this is the word that I
 2 couldn't recall earlier. Again, on the Warrick
 3 marketing piece, the \$59.40 for a carton of 60
 4 albuterol, they never claimed that it was their WAC.
 5 They just used the word "direct price." And so when I
 6 looked at this, this marketing piece, I thought: Well,
 7 this is just a mistake and this should be rectified.
 8 And that's when Jerry said: Well, I can't
 9 change it on your behalf. Someone from Warrick is going
 10 to have to submit to First Data Bank or Red Book and
 11 change it.
 12 And that's when I said: Jerry, they're not
 13 going to do that.
 14 And thinking of saying that now, I must have
 15 had an understanding about the spread then. They're not
 16 going to change that.
 17 Q. Did you speak with anybody else at Florida
 18 Medicaid besides Jerry Wells?
 19 A. No.
 20 Q. Did you explain for Jerry Wells what Dey's
 21 spread was on its products?
 22 A. No.
 23 Q. After you had your conversation -- let me ask
 24 you this: Did you have one conversation with Mr. Wells
 25 or numerous conversations?

Ross Uhl 2/24/2003

70

72

1 A. I recall just one. It might have taken me a
 2 couple of times to reach him, but I recall just having
 3 one conversation with Jerry Wells.
 4 Q. Did you know at the time of your conversation
 5 with Jerry Wells what the spread was for Dey's products?
 6 A. I was not aware of even -- right; no, I was
 7 not.
 8 Q. After your conversation with Mr. Wells, did you
 9 bring it, the contents of the conversation, to the
 10 attention of Ms. Jackson in Napa?
 11 A. I would say that I don't recall per se. But I
 12 would say that I certainly would have brought it to her
 13 attention and probably even spoke to Bob on it, yes.
 14 Q. And is that what prompted Ms. Jackson to make
 15 her own communication to Ms. Wells?
 16 A. Well, initially I thought that I had actually
 17 initiated the conversation. But then when you showed me
 18 this document at the sworn testimony earlier, it says
 19 that Mr. Wells would like to talk to Ross. So it may be
 20 that Carrie had independently gathered this information
 21 or I submitted that marketing piece to Carrie and she
 22 actually -- that could have been it -- that she did some
 23 followup and then sort of put this in this format and
 24 then sent it back to me. Apparently she spoke to Jerry
 25 and then said: He'd like to talk to you, Ross.

1 there was no incentive to make the change?
 2 A. I don't recall, but I probably would have said
 3 they're making more money that way. And I never made
 4 the connection that the state was paying out more
 5 money. I was just thinking that the provider is making
 6 more money.
 7 MR. MOORE: Objection; form. Objection;
 8 nonresponsive.
 9 MR. WINTER:
 10 Q. Did you explain to Mr. Wells what you
 11 understood to be the spread?
 12 A. I don't recall ever getting in that kind of
 13 conversation with him, no.
 14 MR. WINTER: Why don't we go ahead and take a
 15 break now. It's 10:40. Let's come back at 10:50.
 16 (A RECESS WAS TAKEN FROM 10:44 TO 10:49 A.M.
 17 - FIVE MINUTES)
 18 MR. WINTER:
 19 Q. Mr. Uhl, before we took a break, we were
 20 looking at a couple of different exhibits. First of
 21 all, we were looking at Exhibit 72, which is dated May
 22 30th, '95. And then later we looked at Exhibit 777
 23 dated August 12th, '94; correct?
 24 A. That is correct.
 25 Q. And Exhibit 777 relates to communications that

71

73

1 Q. So your recollection is refreshed now by the
 2 memorandum; you believe that Ms. Jackson spoke to Mr.
 3 Wells first?
 4 A. Yes.
 5 Q. And Mr. Wells indicated to you that he couldn't
 6 make a change based on your representations but he'd
 7 have to hear directly from Warrick?
 8 A. Correct. Not that he would have to hear from
 9 Warrick. That the database, the data collection agency
 10 -- which is, again, either Red Book or Blue Book or
 11 First Data Bank -- would have to make the change because
 12 they simply -- they went by what First Data Bank or Red
 13 Book or Blue Book submitted to them. That's how they
 14 based their reimbursement, on Blue Book.
 15 Q. And if I understood your testimony a moment
 16 ago, what you said to him in response to that is they're
 17 not going to do that, they have no incentive to do it?
 18 MR. MOORE: Objection; form. Excuse me.
 19 Objection; form.
 20 MR. WINTER:
 21 Q. Is that correct?
 22 MR. MOORE: Same objection.
 23 A. That's correct.
 24 MR. WINTER:
 25 Q. Did you explain to him why in your opinion

1 you had with Mr. Jerry Wells at Florida Medicaid which
 2 were prompted by a conversation you had with one of your
 3 customers at Pharmacy Factors; is that correct?
 4 A. That is correct.
 5 Q. And that gentleman's name was Jeff Hunt?
 6 A. That is correct.
 7 Q. And essentially did Mr. Hunt come to you and
 8 tell you that he was going to have to switch 10 percent
 9 of his business off of Dey's albuterol and go to
 10 Warrick's albuterol?
 11 A. He called me to let me know that they were
 12 going to put their patients in Texas and Florida --
 13 their Medicaid patients in Texas and Florida on Warrick
 14 due to a more favorable reimbursement.
 15 Q. So Mr. Hunt initiated communication to you?
 16 A. That is correct.
 17 Q. And he specifically told you in that
 18 communication that Warrick had a more favorable
 19 reimbursement?
 20 MR. MOORE: Objection; form of the question.
 21 A. That is correct.
 22 MR. WINTER:
 23 Q. Did any of your other accounts make the same or
 24 a similar complaint to you?
 25 A. Yes.

Ross Uhl 2/24/2003

74

1 Q. Who?

2 A. There were other accounts. One that I can

3 recall was MK Diabetic.

4 Q. MK Diabetic?

5 A. Yes. And Respiratory.

6 Q. And Respiratory is part of the name?

7 A. Same name. In Jacksonville, Florida.

8 Q. Any others, sir?

9 A. I don't recall any others specifically other

10 than I had a go-forward knowledge of the State of

11 Florida's reimbursement policy and how customers in

12 Florida, homecare customers, would use the Warrick

13 product for their Medicaid patients.

14 Q. Did Pharmacy Factors ever return its albuterol

15 business to Dey?

16 A. To my knowledge, as I recall, no. The Medicaid

17 business stayed with Warrick Pharmaceuticals.

18 Q. Did MK Diabetic and Respiratory ever return its

19 albuterol business for Medicaid patients to Dey?

20 A. Patients that they had put on the Warrick

21 product stayed on the Warrick product.

22 Q. Based on your observations of the interaction

23 between Ms. Burnham and Mr. Mozak, do you believe that

24 Ms. Burnham had the authority to adjust or update Dey's

25 WAC without Mr. Mozak's permission?

1 Dey had made an adjustment to its WAC prices to level

2 the playing field with Warrick?

3 A. I was never aware that Dey made an adjustment

4 to their WAC price. As I mentioned earlier, I don't

5 recall ever seeing this memo about this term that we've

6 updated our WAC values. This memo says to sales and

7 marketing. But as I testified earlier, I do not recall

8 ever seeing this memo.

9 MR. FLECKMAN: Let the record reflect that the

10 witness is referring to Exhibit Number what?

11 THE WITNESS: 72.

12 MR. WINTER: Objection; nonresponsive.

13 Q. Did you ever notify any of your customers that

14 Dey had made an adjustment to its WAC price in order to

15 level the playing field with Warrick?

16 MR. FLECKMAN: Objection; form.

17 A. No.

18 MR. WINTER:

19 Q. And just so she can get it all down, when

20 anybody is stating an objection, let's let them finish

21 first before you answer.

22 A. Okay.

23 Q. Thanks. You stated that when you first came to

24 Dey Labs, Dey had not yet launched its albuterol

25 product; correct?

75

1 A. No.

2 Q. Please describe all the times that you can

3 recall where you heard of an incident where Ms. Burnham

4 took unauthorized action at Dey Labs?

5 MR. FLECKMAN: Objection; form.

6 A. I can't recall any time that I was aware of Ms.

7 Burnham taking any action on her own.

8 MR. WINTER:

9 Q. You testified a moment ago that what prompted

10 you to call Jerry Wells was your feeling that this

11 pricing situation had placed Dey at a competitive

12 disadvantage?

13 MR. MOORE: Objection; form.

14 MR. WINTER:

15 Q. Is that correct?

16 MR. MOORE: Same objection.

17 A. What prompted my call would be -- yes, yes,

18 that's correct.

19 MR. WINTER:

20 Q. Did you ever call any of the Medicare carriers,

21 any of the DEMERCs, and bring to their attention there

22 was this difference in the spread for Dey's product

23 versus Warrick's product?

24 A. No, not Medicare.

25 Q. Did you ever notify any of your customers that

76

77

1 A. That is correct.

2 Q. Do you recall when Dey did launch its albuterol

3 product?

4 A. March of 1992.

5 Q. Were you involved in preparation and gearing up

6 for the launch of Dey's albuterol?

7 A. We had some prelaunch discussions, some

8 meetings, to talk about markets, market share, where we

9 were going to sell the product. But in my view, there

10 was not an organized rollout plan for a product as

11 important as albuterol was to Dey Laboratories.

12 Q. In your experience, later as Dey matured as a

13 company, was there more organized implementation of

14 product rollout?

15 A. In my view, there was not.

16 Q. Do you consider that to be a weakness at Dey?

17 A. Yes, I did.

18 Q. So you said there were some informal meetings

19 to discuss market. And I'm sorry, what else did you

20 say? What else was discussed at these informal

21 meetings?

22 A. Discussed the literature, the customers that

23 would have been priority versus low priority was where

24 the calls were going to be made first.

25 Q. Where was the focus going to be?

Ross Uhl 2/24/2003

90

1 prepared for the launch?

2 A. Correct.

3 Q. At any of these meetings prior to the launch,

4 did you discuss with any of your colleagues the fact

5 that Dey intended to incentivize retail and chain

6 pharmacies to purchase Dey's unit dose albuterol by

7 increasing the spread for Medicaid and Medicare

8 reimbursement?

9 A. No.

10 Q. At any time prior to the launch did you discuss

11 with any of your colleagues a pricing strategy to

12 increase the spread to retail and homecare accounts by

13 lowering acquisition costs?

14 A. No.

15 Q. Did you discuss at any time prior to the actual

16 launch in March of 1992 what your bid range for

17 pharmacies and chain pharmacies was going to be?

18 A. Yes.

19 Q. Did you ever discuss how that bid range would

20 increase the spread for retail and provide Dey with the

21 highest profit?

22 A. I don't recall during these discussions any

23 conversation about spread simply because we were the

24 only generic albuterol available, and it was either our

25 product or a much higher priced branded product, such as

91

1 the Ventolin or the Proventil.

2 Q. Okay. After a generic competitor for Dey's

3 albuterol unit dose came on the market sometime in 1993

4 -- and your testimony is that would have been Warrick;

5 correct?

6 A. Correct.

7 Q. After Warrick launched its product to compete

8 with Dey's unit dose albuterol, do you recall when you

9 first had a conversation with anyone at Dey Labs

10 regarding a spread?

11 A. I don't recall any conversations about spread,

12 Medicare or Medicaid during this time.

13 Q. During which time, sir?

14 A. During this launch time or even when Warrick

15 introduced the product.

16 Q. So you don't recall it in 1992 leading up to

17 the launch or in 1993 when Warrick was introduced --

18 when Warrick introduced its competitive product?

19 A. Correct.

20 Q. Did you attend the national sales meetings,

21 sir?

22 A. In which year?

23 Q. The national sales meetings for any year in

24 which you worked with Dey Labs.

25 A. Yes, I did.

92

1 Q. Were there any national sales meetings that you

2 did not attend between 1991 and the year 2000 when you

3 worked at Dey Labs?

4 A. No.

5 Q. So you attended '91 through 2000 inclusive?

6 A. Correct.

7 Q. And did you from time to time have a

8 presentation or a breakout session in which you would

9 lead the discussion at a national sales meeting?

10 A. Yes, I did.

11 Q. And prior to having your item placed on the

12 agenda for a national sales meeting, would you have to

13 go through some sort of a signoff or approval process?

14 A. Yes. Probably in one of these premeetings or

15 presales meetings, we discussed topics or were assigned

16 topics to discuss.

17 Q. I'm going to show you now a document that I

18 think may be already in evidence as an exhibit, but

19 we're going to give it a new name because I can't find

20 it. So it's going to be 778. And it's DL-TX-0075972.

21 (EXHIBIT 778 WAS MARKED FOR IDENTIFICATION.)

22 MR. WINTER: I've got one extra copy if anybody

23 needs one.

24 MR. MOORE: I've got one. Thank you.

25 MR. WINTER:

93

1 Q. Mr. Uhl, would you take a minute and look

2 through this document, please, and look up when you're

3 finished.

4 A. (Reading.) Okay.

5 Q. Would you identify Exhibit 778 for us, please?

6 A. 778 is entitled Teams Win, Working a Homecare

7 Pharmacy, authored by myself on Monday, January 24th,

8 1994, 12 to 1 p.m.

9 Q. Is January 24th, Monday, 1994, 12 to 1 p.m.,

10 when you prepared this document or when you presented

11 it?

12 A. When I presented it.

13 Q. Did you present it at the 1994 national sales

14 meeting?

15 A. Yes.

16 Q. And did you send this handout or a draft of

17 this through your chain of command for review and

18 approval before you made the presentation at the January

19 '94 national sales meeting?

20 A. I would say yes, I did.

21 Q. What's the purpose of this handout, sir?

22 A. The purpose of this presentation, noting that

23 it was from 12 to 1 p.m., tells me that it was a

24 breakout meeting where we broke out into small groups,

25 probably on a rotation basis. The purpose was to bring

Ross Uhl 2/24/2003

94

1 the sales force, the national sales force, up to speed.
 2 This was like a primer on how the homecare pharmacy
 3 worked as all of them would have homecare pharmacies in
 4 their territory. And as all homecare pharmacies shipped
 5 to patients that were on Medicare, this was an attempt
 6 to help explain exactly how this market functions from
 7 my position -- from what I understood at the time.
 8 Q. In looking, I guess, at the fourth page into
 9 the presentation, you've got on DL-TX-0075975 -- do you
 10 see the Bates number on the bottom right-hand corner?
 11 A. Yes.
 12 Q. On that page you've got some background
 13 information, some definitions.
 14 A. Correct.
 15 Q. And as you look at these definitions, does this
 16 refresh your recollection that as of January 1994 you
 17 had at least some understanding as to how Medicare and
 18 Medicaid had reimbursed providers for dispensing
 19 pharmaceutical products?
 20 A. That is correct.
 21 MR. FLECKMAN: Before you go any further, read
 22 the question back to me, Ms. Court Reporter.
 23 (REQUESTED PORTION OF RECORD READ.)
 24 MR. FLECKMAN: Hold on just one second.
 25 Okay.

95

1 MR. WINTER: Steve, are you ready?
 2 MR. FLECKMAN: Yes, I am.
 3 MR. WINTER:
 4 Q. Mr. Uhl, I'd like you to go ahead and continue.
 5 Have you already looked through the entire document
 6 once?
 7 A. Yes, I have.
 8 Q. Okay. Let's go to the section that says
 9 Selling to a Homecare Pharmacy on DL-TX-0075985.
 10 A. Okay.
 11 Q. And under the heading Durable Medical Equipment
 12 Dealers, you have several bullet points; is that
 13 correct?
 14 A. That is correct.
 15 Q. And you're describing for your audience who
 16 durable medical equipment dealers are?
 17 A. These are companies that supply the oxygen for
 18 Medicare patients or sick room supplies or beds, foam or
 19 egg crate beds, things of this nature, meaning durable
 20 medical equipment.
 21 Q. So you're identifying what a DME dealer is and
 22 how it functions in this market?
 23 A. Yes.
 24 Q. And you're also describing what home health
 25 care agencies are, and it includes some bullet points

96

1 under your description of home health agencies?
 2 A. Correct.
 3 Q. The next page you have a heading titled Retail
 4 Pharmacies. And you include several bullet points
 5 describing retail pharmacies and their relationship
 6 between home health care and DME dealers?
 7 A. Right. This example was used so the sales
 8 representative could spot some signs to where if a
 9 retail pharmacy was involved in taking Medicare claims
 10 -- for instance, a sign on the door that says we bill
 11 Medicare -- higher volume of meds as opposed to other
 12 retail stores of that same size.
 13 Q. And again, this whole presentation is to
 14 educate the national sales staff on how they can sell
 15 Dey's products to home health care facilities?
 16 A. Correct.
 17 Q. As well as to retail?
 18 A. That's correct.
 19 Q. On the next page, under Roman numeral III,
 20 entitled Selling Against the Competition, what are you
 21 describing here?
 22 A. This is just kind of a bullet point breakdown
 23 of objections that they could be handed in the field and
 24 a comparison of our product versus four competitors
 25 listed on this page.

97

1 Q. So, for example, with Warrick under foams --
 2 the first bullet point was foams in cup, what do you
 3 mean by that?
 4 A. Certainly. The product is used in conjunction
 5 with a compressor-driven nebulizer, and this nebulizer
 6 has a little cup in which you pour the medication in.
 7 And then when the compressor is turned on, it
 8 aerosolizes. And during the aerosolization process, the
 9 Warrick product, because it has a preservative in it,
 10 tends to foam. And sometimes the patients -- it looks
 11 like soap. Sometimes the patients can get panicky when
 12 they see that. They see that and they think there's
 13 something wrong with the medication.
 14 Q. So with Dey's product, you didn't have that
 15 problem with foaming in the cup?
 16 A. That's correct. Because we did not introduce a
 17 preservative to the product.
 18 Q. The second bullet point talks about a screw-top
 19 cap -- or it says screw-top?
 20 A. Correct.
 21 Q. Are you referring to the screw-top cap on the
 22 Warrick product which Dey had a twist-off cap?
 23 A. As I mentioned earlier, the Warrick product had
 24 a threaded screw-top cap not unlike a bottle of
 25 White-Out for the old typewriters. And our product had

Ross Uhl 2/24/2003

102

1 some pharmacies were compounding their own products but
 2 billing Medicaid by using Dey's NDC?
 3 A. Correct.
 4 Q. And you thought that was illegal?
 5 A. Yes.
 6 Q. Under the heading General, are you describing
 7 -- what are you describing there under general?
 8 A. Just, I think, more of a recap of bullet
 9 points, walk-away points: Sterile unit dose with no
 10 preservative, so it would reference the Warrick. I
 11 might have even said: Okay, now, what am I referring to
 12 here? The Warrick product. We at this point had
 13 already sold millions of vials. In other words, we had
 14 already introduced into the marketplace millions of
 15 vials of our product with no product complaints. We
 16 manufactured all of our products as opposed to going to
 17 an outside contract manufacturer. The incentive that we
 18 had another product in the pipeline, cromolyn sodium.
 19 And that would be a company like a one-stop shop. You
 20 would have a full line of these bronchodilators, the
 21 classic drugs.
 22 Q. So these are selling points that really go back
 23 to Dey's characteristics and how they compare formally
 24 with all the competitors previously listed?
 25 A. That is correct.

103

1 Q. Let's go to the next page under Roman number
 2 IV, Pricing and Reimbursement. And you're talking about
 3 here Homecare Economics and Margins for Albuterol; is
 4 that right?
 5 A. Correct.
 6 Q. Are you explaining how homecare pharmacy --
 7 under the heading Homecare Pharmacy Profit, let's walk
 8 through each of those different entries and please
 9 explain for us.
 10 A. This was an attempt to at least explain how the
 11 Medicare -- number one, why were these homecare
 12 pharmacies in business and how they made their money by
 13 servicing the Medicare patient. And I brought up a few
 14 examples, one for the homecare, one for the DME dealer.
 15 Because at this time there was a relationship between a
 16 pharmacy and a DME dealer.
 17 In the first example, if a pharmacy had the
 18 patient -- in other words, the prescription came from
 19 the doctor, the pharmacy would take possession of the
 20 Dey product for whatever cost, in this case 45 cents.
 21 They would bill the DME dealer in essence an upcharge.
 22 So they would charge the DME dealer 35 cents a vial.
 23 And then the profit would have been -- I'm not sure of
 24 the profit. Let me look at this.
 25 Q. Are these selling points that you're educating

104

1 your national sales staff to use when marketing their
 2 products to homecare pharmacies?
 3 A. No. This was just an attempt on my part to
 4 help them try to understand what's in it for the
 5 homecare pharmacy and why are they interested at all in
 6 taking on a Medicare patient. I don't recall at any
 7 time that this was to be used outside of this meeting to
 8 discuss reimbursement. Because as I mentioned before,
 9 that's really not our area where we're trying to sell
 10 against competition or put product in the pharmacy. But
 11 this was an explanation to try to explain to them how a
 12 pharmacy and a DME dealer both profited and worked by
 13 purchasing either our product or a competitor's or
 14 compounding it and then getting a reimbursement from
 15 either a Medicaid or a Medicare provider.
 16 Q. So you're explaining for your audience, your
 17 sales staff colleagues, some of the factors and
 18 considerations that may motivate the provider when he
 19 makes a purchasing decision?
 20 A. That is correct.
 21 Q. And it was your understanding at the time in
 22 January of 1994 that in part providers were motivated by
 23 reimbursement?
 24 A. Correct.
 25 Q. And you make a similar presentation on the next

105

1 page for the sodium that was in the pipeline; is that
 2 right?
 3 A. The cromolyn sodium.
 4 Q. Cromolyn sodium. Excuse me.
 5 A. Yes; that's correct.
 6 Q. Did you ever see any drug utilization data that
 7 was published -- that was compiled with respect to any
 8 state Medicaid program?
 9 A. No, I didn't. As a matter of fact, when you
 10 presented this exhibit from Carrie, she mentions usage.
 11 And we were never privy or didn't know that information
 12 was obtainable by us.
 13 Q. When you say we, you mean --
 14 A. The sales force.
 15 Q. -- the sales staff?
 16 A. Yes.
 17 Q. So apparently Ms. Jackson was privy to that
 18 information but you weren't?
 19 A. Correct.
 20 Q. Where did you get the understanding that some
 21 pharmacists were compounding the albuterol instead of
 22 purchasing the pharmaceutical product?
 23 A. By just a visual observation of their pharmacy.
 24 Q. You saw it on the shelf?
 25 A. Yes.

Ross Uhl 2/24/2003

106

108

1 Q. And it's labeled as a compounded product?

2 A. Yes. It won't say compounded, but it's their

3 own labels and not ours or Warrick's or Glaxo's or

4 anyone else's.

5 Q. Other than the 1994 national sales meeting, did

6 you make any other presentations that come to mind

7 readily?

8 A. I can't recall any other formal presentation to

9 a group regarding homecare pharmacies.

10 Q. And I'm not limiting my question to homecare

11 pharmacies. Let me ask another question.

12 As you're no doubt aware at this point, we've

13 deposed several of your former colleagues. And Mr.

14 Galles and Ms. Daulong and Mr. Upp all recalled a

15 presentation that you made, they believe is the 1995

16 national sales meeting, where you discussed how the

17 reimbursement spread was a factor for retail pharmacists

18 when they make purchasing decisions. Do you recall

19 making such a presentation?

20 A. I don't recall that.

21 Q. Let me show you what's previously been marked

22 as Exhibit 460. And while we're looking for that

23 exhibit, you mentioned that when the managed care group

24 came online, its first supervisor was Mr. Tipton?

25 A. Correct.

1 Q. And did you present this worksheet as part of a

2 breakout session or block of instruction at the 1995

3 national sales meeting?

4 A. Judging by the stamp Building on Success, I

5 would say I did present this at a breakout meeting at

6 the -- did you say '95 sales meeting?

7 Q. Yes, sir, I did say 1995. So your testimony is

8 yes, you did present this Exhibit 460 at a breakout

9 session in '95?

10 A. Yes, I did.

11 Q. Let's just go ahead and look at the first page

12 of the document, sir. You've got three bullet points.

13 And under the first bullet point that says AWP

14 reimbursement, what is it that you're trying to impart

15 to your audience there?

16 A. I believe I was illustrating one method of

17 reimbursement by third-party providers such as managed

18 care or Medicare or Medicaid.

19 Q. And you're explaining for your audience --

20 withdraw that question.

21 Was your audience for this presentation the

22 sales staff?

23 A. It must have been the national sales force,

24 yes.

25 Q. And so is this an effort to explain to your

107

109

1 Q. And you went to work for him in managed care?

2 A. Yes; that's correct.

3 Q. So would you have been working with Mr. Tipton

4 in managed care in the spring of 1995?

5 A. I believe that is correct, yes.

6 Q. Let me show you Exhibit 460 and ask you to take

7 a couple of minutes to look through that. Look up when

8 you're ready, please.

9 MR. MOORE: Do you have any extra copies of

10 that one?

11 MR. WINTER: I may have one.

12 A. (Reading.) Okay.

13 Q. Mr. Uhl, is Exhibit 460 a part of a handout

14 that you prepared and presented at the 1995 national

15 sales meeting?

16 A. I see by the stamp Building on Success, that

17 must have been our theme. And this looks familiar. I

18 don't recall a formal presentation, but this does look

19 familiar, yes.

20 MR. WINTER: Objection; nonresponsive.

21 Q. Sir, is Exhibit 460 something that you

22 prepared?

23 A. I recall that I did prepare this worksheet or

24 at least assisted in putting this worksheet together,

25 yes.

1 audience, the national sales force, why AWP

2 reimbursement was an important factor for customers when

3 making purchasing decisions?

4 A. I'm trying to recall the purpose of bringing up

5 the AWP reimbursement. But I'm assisted by looking at

6 the bullet point number 2, and the topic of this must

7 have had something to do with converting customers from

8 unit dose to multidose -- I'm sorry. I had that

9 backwards. From multidose to unit dose. So we

10 reimbursed -- but there is reimbursement on multidose

11 and there's reimbursement on unit dose. So I probably

12 was presenting the differences between reimbursement of

13 multidose and unit dose.

14 Q. Was it your understanding that there was an

15 incentive for your customers to convert from using and

16 purchasing -- withdraw the question.

17 Were you trying to explain for the sales staff

18 how they could describe for customers the incentive they

19 had to switch from purchasing multidose albuterol

20 products to unit dose albuterol products?

21 A. Well, as I recall from just looking at this

22 right now, I think the motivation behind this was to

23 move patients -- excuse me, not patients -- but to move

24 customers from multidose to unit dose. And there must

25 have been some discussions before this meeting that

Ross Uhl 2/24/2003

126

128

1 Did I read that correctly?
 2 A. Correct.
 3 Q. Is that a reference to the presentation that
 4 you made?
 5 A. I would say it is.
 6 Q. Did Ms. Debi Codute assist you in that
 7 presentation.
 8 A. Yes.
 9 Q. Who was Ms. Codute?
 10 A. Ms. Codute was a sales or a district account
 11 manager or a salesperson who was chosen personally by
 12 Bob Mozak to become part of the managed care group along
 13 with myself.
 14 Q. Did Mr. Mozak personally instruct you and Ms.
 15 Codute to put together a presentation for the national
 16 sales meeting on this issue?
 17 A. I don't recall that he specifically instructed
 18 us. But I'm sure there was some conversation that
 19 Debbie Codute and myself and Bob had about topics for
 20 the national sales meeting.
 21 Q. Turning to the last page of the reimbursement
 22 comparison award sheet itself, the copy that you're
 23 looking at now does not include along the bottom of it
 24 the file path. And I'll represent to you that we have
 25 another copy somewhere that has a file path along the

1 the Ventolin multidose or the Warrick multidose.
 2 Q. So is this either the Schering product or the
 3 Warrick product?
 4 MR. MOORE: Objection; form.
 5 A. I can't be sure which product -- we could
 6 compare AWP's of those products to try to determine who
 7 had a -- which company had an AWP of \$12.50.
 8 MR. WINTER:
 9 Q. But as you sit here today and look at it, you
 10 don't recall which company had that AWP?
 11 A. That's correct.
 12 Q. Was it your understanding that whoever's
 13 company -- whichever company owned that AWP, that the
 14 AWP would have been a price that the company set?
 15 A. It would have been a published Red Book, Blue
 16 Book price for their AWP for that product, yes.
 17 Q. That the database service would have published
 18 based upon information provided by the manufacturer?
 19 MR. MOORE: I'm going to object to the form of
 20 the question as leading the witness.
 21 MR. FLECKMAN: Yeah. I object.
 22 MR. MOORE: You're not entitled to lead this
 23 witness. You know that.
 24 MR. FLECKMAN: Let me just hear this question
 25 back.

127

129

1 bottom. And Mr. Galles looked at that file path and
 2 recognized it as a document that he had actually
 3 prepared himself on his computer. And apparently, based
 4 upon the memo, he thought that he had gotten the idea
 5 for that particular format from Steve Robertson.
 6 A. Okay.
 7 Q. But it's your testimony -- or is it your
 8 testimony that the substance of what is put forth on
 9 this reimbursement comparison worksheet is essentially
 10 the same substantively as the information that you
 11 presented through your unit dose worksheets and your
 12 multidose worksheets that you presented in the national
 13 sales meeting?
 14 A. That is correct.
 15 Q. Now, looking at the left-hand column of the
 16 reimbursement comparison worksheet on the left-hand
 17 side, it's talking about albuterol multidose bottles,
 18 20 ML; correct?
 19 A. Okay.
 20 Q. Looking at the left-hand side of the
 21 reimbursement comparison worksheet under the heading of
 22 Albuterol Multidose Bottles, 20 Milligrams, whose
 23 product are you talking about?
 24 A. I don't know for 100 percent sure, but I would
 25 imagine we would be making that comparison either with

1 (REQUESTED PORTION OF RECORD READ.)
 2 MR. FLECKMAN: Is that the whole question?
 3 MR. WINTER: I'll ask another question.
 4 MR. MOORE: No. There's a leading question.
 5 MR. WINTER: Let's move on.
 6 MR. MOORE: Yeah. Okay.
 7 MR. WINTER:
 8 Q. Do you know how the database services got the
 9 AWP that they published?
 10 A. Yeah. The database services collect that
 11 information from information that the manufacturer
 12 submits at the time of the abbreviated new drug
 13 application.
 14 Q. The next entry underneath the AWP is an entry
 15 that says cost. Do you know where that information came
 16 from?
 17 A. I don't recall where that information would
 18 come from. It could have been an average industry cost,
 19 it could have been from competitive reports, their cost.
 20 What they were charging a retail pharmacy was \$5.75.
 21 Q. Is that information that you could have
 22 gathered from your sources; in other words, talking to
 23 your accounts? Like you mentioned an account was a
 24 source of intelligence.
 25 A. That is correct.

Ross Uhl 2/24/2003

130

132

1 Q. And are there other sources of information
 2 besides just talking to your retail accounts?
 3 A. Certainly from group pricing or rather group --
 4 retail buying groups or other types of groups will share
 5 their current cost in order for you to say if you want
 6 the business, you can submit that product. But
 7 generally just from asking what are they charging you
 8 for that 20-milliliter bottle of albuterol.
 9 Q. And you're comparing that on the left-hand --
 10 well, taking the left-hand column all the way through,
 11 do you see the entry that says reimbursements?
 12 A. Yes.
 13 Q. Would you explain that first entry for us,
 14 please, where it says albuterol reimbursement per TX
 15 equals \$8.75/40 equals 22 cents?
 16 A. Okay. This mathematical formula is based on
 17 the reimbursement of \$8 -- the assumed reimbursement of
 18 \$8.75 and divided by 40, which is the approximate
 19 treatments per bottle that a patient could get. Bear in
 20 mind, this bottle is a dropper bottle. So the patient
 21 would insert the dropper into the bottle and pull out
 22 several drops that equaled a treatment. And those drops
 23 would equal 40, 40 treatments.
 24 Q. So you understood that there were approximately
 25 40 treatments per multidose bottle?

1 cents.
 2 Q. And if you added in the cost of the saline,
 3 then you had a cost of approximately 20 cents per
 4 treatment?
 5 A. Correct.
 6 Q. And so where the customer -- the provider
 7 pharmacy paid 20 cents per treatment and was reimbursed
 8 22 cents per treatment, they make 2 cents on each
 9 treatment; is that correct?
 10 A. That's correct.
 11 Q. And then under the annualized per patient, you
 12 just multiplied that out by the number of patients for
 13 the year to get the estimated profit?
 14 A. I believe that's correct how we did that, yes.
 15 Q. And on the right-hand column under Dey unit
 16 dose albuterol, are you engaging in essentially the same
 17 exercise only for Dey's products and Dey's prices?
 18 A. Correct. We took the AWP and then broke it
 19 down by what we felt was the reimbursement. Again, that
 20 reimbursement was either something we could know exactly
 21 what it was or an estimate. And then took that price.
 22 And that's for a carton, it looks like, which I don't
 23 know -- for 25 vials. And then took that and just did
 24 the same kind of calculation to come up with a per dose
 25 cost versus reimbursement.

131

133

1 A. Correct.
 2 Q. And the abbreviation TX stands for treatment?
 3 A. Prescription.
 4 Q. Prescription? Okay.
 5 A. Correct.
 6 Q. So under the column reimbursement where it
 7 says: Total reimbursement for TX, 22 cents, is that 22
 8 cents per prescription or 22 cents per treatment?
 9 A. Per treatment. Maybe that TX does mean
 10 treatment. I forgot what that means now. Right. That
 11 was the idea, was to break it down into the treatment so
 12 it could be compared with a unit dose albuterol
 13 treatment.
 14 Q. Okay. So then underneath the column still on
 15 the left-hand side of the page where it says cost, you
 16 have the entry: Albuterol cost per TX, \$5.75, divided
 17 by 40 equals 14 cents; correct?
 18 A. Correct.
 19 Q. And what is it you're calculating there?
 20 A. Okay. That would be for -- I'm not sure if
 21 that cost is for -- oh, that's for the multidose.
 22 Okay. Up at the top heading there. If you took the
 23 5.75 -- the bottle which cost 5.75 and divided that by
 24 40 treatments, that gave you a treatment cost or cost
 25 per treatment, in essence, of that medication, at 14

1 This right-hand calculation, I'm not really --
 2 the left hand looks more familiar with what we
 3 originally looked at at the sales meeting, but this one
 4 looks a little foreign to me. They took a per carton,
 5 it looks like, and then took the cost -- or the
 6 reimbursement, and then you plugged in your cost per
 7 vial and then came up with what -- that's why it's a
 8 worksheet. So the retail would plug in what their costs
 9 for a dose of -- unit dose of Dey albuterol would be and
 10 then subtract it from reimbursement. And then you would
 11 come up with an overall difference between cost and
 12 reimbursement would be the profit.
 13 Q. And when the numbers are all plugged in, was it
 14 your understanding and experience that the reimbursement
 15 profit for a provider who was dispensing Dey's unit dose
 16 was far in excess of the reimbursement profit of a
 17 provider who was dispensing Warrick's multidose?
 18 A. Correct.
 19 Q. And in fact, is that what you were
 20 demonstrating through the multidose and unit dose
 21 worksheets that you created?
 22 A. Correct. It's the same -- it's the same type
 23 of table, just slightly --
 24 Q. And you understood that the payors in this
 25 instance, when we're talking about Medicare and

Ross Uhl 2/24/2003

218

220

1 Q. So the opinion that you just offered is your
2 speculation on the subject; is that fair to say?
3 MR. WINTER: Objection; form.
4 A. My opinion is formed based on the ten years
5 that I spent at Dey Laboratories submitting pricing and
6 submitting questions and submitting advice, submitting
7 suggestions to the committee, to Bob and to others. And
8 knowing how our company operated, the decisions were
9 made unilaterally by Bob Mozak.
10 MR. FLECKMAN:
11 Q. Let me ask you something. In the ten years, as
12 I understand your testimony, you've testified that there
13 is no other occasion that you're aware of on which WAC
14 was ever misreported intentionally to a price reporting
15 service to your knowledge; correct?
16 A. I'm getting off the question because
17 "misreported," I don't really understand "misreported."
18 Q. Let me ask you a question and see if I can get
19 you to answer it. In the ten years that you were
20 employed with Dey, are you personally familiar with any
21 situation in which Dey increased WAC on a generic
22 product? I thought you said you were not.
23 MR. WINTER: Objection; form.
24 A. I am not, no. Only this memo would indicate
25 that -- would suggest that we increased the WAC at this

1 MR. FLECKMAN:
2 Q. Go ahead.
3 A. That is correct.
4 Q. Would you take a look at the second paragraph
5 under the listing of states contained in this memo?
6 A. On this 721?
7 Q. Right. Under the listing of states, the third
8 paragraph.
9 A. Yes.
10 Q. It's 72, Exhibit 72. Do you see the first
11 phrase: WAC is not representative of our published
12 wholesale list prices?
13 A. Yes, I see it on the memo.
14 Q. But you've testified that WAC is representative
15 of the published wholesale list prices because that's
16 the invoice price to the wholesaler; correct?
17 A. That is correct.
18 Q. Now, based on your experience at Dey, do you
19 think that Helen Burnham would have known that that
20 phrase is inaccurate?
21 MR. WINTER: Objection; form.
22 MR. FLECKMAN:
23 Q. Or do you think that she would not have known
24 that?
25 MR. WINTER: Objection; form.

219

221

1 given time.
2 MR. FLECKMAN:
3 Q. And you're making some inferences in the year
4 2003 about the meaning of this memo and how it came to
5 be created eight years ago; correct?
6 A. Correct.
7 Q. Okay. But you don't know how it came to be
8 created eight years ago, do you? Yes or no? Do you
9 know how this memo came to be created eight years ago?
10 MR. WINTER: Objection; form.
11 A. Well, again, I can offer conjecture on how I
12 felt like this memo might have been created.
13 MR. FLECKMAN:
14 Q. That's what I'm asking. Is it basically your
15 conjecture? Is that what you're saying? You can offer
16 conjecture as to how this may have come to be created
17 eight years ago?
18 A. I can offer conjecture.
19 Q. Okay. But aside from conjecture, you were not
20 a party to any conversations or dialogue where you were
21 a participant in conversations or overheard
22 conversations regarding the subject of raising WAC
23 that's reflected in this memo?
24 MR. WINTER: Objection; form.
25 A. That is correct.

1 A. Well, her department --
2 MR. FLECKMAN:
3 Q. No, sir. I'm asking about her.
4 MR. WINTER: Steve, let him finish his answer.
5 MR. FLECKMAN:
6 Q. I would like you to hang in there with me. I
7 know it's late. I'm going to ask you to listen to my
8 questions. I'm not asking you to go speculate about her
9 department. I'm asking you: Do you think that based
10 upon your ten years of being with Dey -- as a matter of
11 fact, let me back up. Let me withdraw that. Let me ask
12 you something.
13 You joined Dey in 1990, didn't you?
14 A. Yes.
15 Q. You didn't work with Helen Burnham in her
16 department ever, did you?
17 A. That's correct.
18 Q. And in fact, she was not there during your
19 ten-year term of employment with Dey, was she?
20 A. She was employed during part of my employment
21 with Dey Labs.
22 Q. For five years?
23 A. Okay. Was it five years?
24 Q. She left in August -- roughly August 1995.
25 Does that refresh your recollection?

Ross Uhl 2/24/2003

230

232

1 over time?

2 A. It's going to affect the rebate over time.

3 Q. Right.

4 A. Yes.

5 Q. Okay. So on day one of that contract, you

6 wouldn't know what that rebate is going to be unless you

7 had a crystal ball?

8 A. Correct.

9 Q. And that's illustrative of the type of

10 performance discount or rebate that was sometimes

11 available to some of your customers in the marketplace?

12 A. Correct.

13 Q. Would you take a look at Exhibit Number 490?

14 Is this a memo that you wrote on or about the date

15 stated?

16 A. Yes, this is a memo that I wrote.

17 Q. And you're writing to whom? Bruce Tipton?

18 A. To Bruce Tipton.

19 Q. Was he your supervisor at that time?

20 A. That is correct.

21 Q. And you are expressing concern about competitor

22 pressures on pricing, on Dey's pricing in that memo?

23 A. Yes. I was responding to competitive pressure

24 from the competitor of Goldline.

25 Q. Tell us who Goldline is.

1 sophisticated consumers when you were dealing with these

2 buying groups and other customers that you had contracts

3 with?

4 MR. WINTER: Objection; form.

5 A. Sophisticated? I felt like I was dealing with

6 professionals who certainly had a handle on the market,

7 the business that they were in, yes.

8 MR. FLECKMAN:

9 Q. Did you have the feeling that they did not

10 understand reimbursement implications and reimbursement

11 profit? Or did you have the feeling that they did

12 understand that subject?

13 A. If you're referring to -- are you referring to

14 like the GeriMeds and the MHAs or in general?

15 Q. (Nodding affirmatively.)

16 A. No. GeriMed and MHA clearly have an

17 understanding of the reimbursement process.

18 Q. Did they need Ross Uhl to teach them that

19 subject?

20 A. Actually quite the contrary. GeriMed actually

21 probably gave me the idea for this reimbursement

22 calculator.

23 Q. By the way, on the worksheet that we looked at,

24 which I think is Exhibit 461 -- it's the last page of

25 Exhibit 460 -- I believe Mr. Galles may have testified

231

233

1 A. Goldline is a multisource generic manufacturer

2 and distributor of all types of pharmaceuticals, OTC and

3 prescription.

4 Q. Was Goldline a competitor of one of the generic

5 products that we've discussed here, albuterol or

6 ipratropium bromide or cromolyn or the acetylcysteine?

7 A. No. It was a competitor of the meter dose

8 inhaler of albuterol.

9 Q. Meter dose inhaler?

10 A. Yes.

11 Q. How about Zenith? Was Zenith a competitor?

12 A. That's actually synonymous with Goldline,

13 Zenith Goldline.

14 Q. They had merged?

15 A. Maybe not at this time or maybe prior to that.

16 But they were -- yes, Zenith Goldline, yes.

17 Q. They were two competitors at one point in time

18 and then they merged, weren't they?

19 A. I believe so, yes.

20 Q. Would you characterize the albuterol market --

21 you can hand that back to me -- as a highly competitive

22 market?

23 A. The albuterol -- overall albuterol multidose,

24 unit dose and meter dose inhaler, yes.

25 Q. Did you feel that you were dealing with

1 that he actually put that together. You've got your

2 hand on it right there.

3 A. Okay.

4 Q. Are you positive that Ms. Daulong, Cindy

5 Daulong Collie, prepared that or is it possible that Mr.

6 Galles prepared it?

7 A. No. It's possible that Mr. Galles prepared

8 this. It was sent by Cindy, and it seems like I had

9 discussions with Cindy prior to this -- the January '94

10 national sales meeting, Exhibit 778. But it certainly

11 could have been prepared by Todd.

12 Q. So when Mr. Winter asked you the question and

13 you responded at one point that Ms. Daulong had prepared

14 that, that was an assumption on your part and not

15 necessarily an accurate one?

16 MR. WINTER: Objection; form.

17 A. It could have been an accurate assumption. It

18 was my understanding at the time that Cindy Daulong was

19 the author of this.

20 MR. FLECKMAN:

21 Q. Okay. And that was an assumption on your part,

22 but you're not positive?

23 A. Correct.

24 Q. What did you mean in Exhibit 781 when you

25 said:

Ross Uhl 2/24/2003

234

236

1 "Whether we like it or not,
2 reimbursement will be a key factor
3 and we must take the initiative
4 early and present this product
5 correctly. After that it is
6 probably out of our hands."
7 A. Was the note to Steve Resnik?
8 Q. Yes.
9 A. I meant that unfortunately there's pressure
10 from our competitors like Roxane and Warrick, but we
11 also had pressure from customers because they are
12 sensitive to reimbursement issues. It's their
13 livelihood, the Medicare business. And they make their
14 money by supplying medications to Medicare
15 beneficiaries. And that would have to be taken into
16 account when we were introducing Duoneb as a branded
17 where the cost would be very close to the reimbursement.
18 Q. And when you said in this same letter or memo
19 that: "Positioning this product in front of HCFA, the
20 agency that administers Medicare benefits, as a branded
21 product and commanding a higher reimbursement may be
22 akin to threading a wet noodle through a needle
23 blindfolded," were you referring to the sort of premium
24 and reimbursement that branded products have
25 historically commanded through the Medicare program?

1 the FDA.
2 Q. So the product had not been launched?
3 A. That's correct.
4 Q. And you don't know anything about the launching
5 of that product or how it's been priced or what it's
6 been sold at or whether it's been launched at all;
7 correct?
8 A. No. I have knowledge of it because I'm
9 currently involved in a similar business, in a similar
10 industry. So I have anecdotal information about Duoneb
11 in the market.
12 Q. From third parties?
13 A. From my customers.
14 Q. Would you take a look at Exhibit 785 and tell
15 me whether this is the type of request for proposal that
16 GeniMed gave Dey while you were at Dey and whether this
17 is the sort of information that Dey would then respond
18 to.
19 (EXHIBIT 785 WAS MARKED FOR IDENTIFICATION.)
20 A. Yes. This is what I would call a bid package.
21 This would be sent directly into Dey, not to me.
22 MR. FLECKMAN: Hold on one second. Hand that
23 one back to me, Ray. Forgive me.
24 Bear with us for just a second while we clarify
25 something. This is March 6, this is March 6 and this is

235

237

1 MR. WINTER: Objection, form.
2 A. I can't speak for how brandeds are reimbursed
3 in Medicare because I'm not familiar with that. What I
4 was referring to there is if you have a base of business
5 that's used to submitting a claim for reimbursement for
6 a medication and paying this cost from Dey or anyone
7 else and getting reimbursed this cost, if you now try to
8 impose upon them perhaps a better product, it's one
9 product that's got both drugs in it, however they're
10 used to this reimbursement, especially if they make it
11 themselves. It was akin to threading a wet noodle
12 because probably it's not going to be done. They're not
13 going to switch to a product that's got a much higher
14 acquisition and no reimbursement. That's what I meant
15 by that.
16 MR. FLECKMAN:
17 Q. Okay. So in other words, HCFA might simply not
18 either approve or purchase the product for whatever
19 constituents it serves?
20 A. Yeah. HCFA may allow a reimbursement, but the
21 reimbursement may be near what Dey was going to ask for
22 the cost for that product.
23 Q. You left Dey while that product was in its
24 incubation?
25 A. I left Dey before the product was approved by

1 March 8. Thank you. I don't have an extra copy. So
2 before you testify, let me give Mr. Winter an
3 opportunity to look at it.
4 MR. WINTER: I have a copy. Thanks.
5 MR. FLECKMAN:
6 Q. Go ahead. You were saying?
7 A. This is typical of what we call a bid package
8 from, in this case, this customer GeniMed that would be
9 submitted directly to our contracts administrator at Dey
10 Labs.
11 Q. And in this contract would GeniMed provide its
12 members -- in connection with this contract, would
13 GeniMed provide its members with any software and
14 assistance to identify reimbursement spread?
15 A. I don't understand your question.
16 Q. Would GeniMed provide its members with software
17 to assist them in evaluating what type of reimbursement
18 profit they could get from Medicaid on these products?
19 A. Oh, I've never seen it, but I'm going to say
20 yes, based on some documentation from GeniMed that I
21 have seen.
22 Q. And that was dated what? March 8?
23 MR. WINTER: Steve, just for the record, would
24 you go ahead and read the Bates number of this Exhibit
25 785?